

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Linda Eunice Kosfeld
SSN XXX-XX-8952

CASE NO. 04-44755 RJK

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. Washington Mutual (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 14, 2004, at 2:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Robert J. Kressel in Courtroom 8 West of the above entitled Court located at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 11, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 5, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on August 25, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001.

This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1. Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$102,500.00, as evidenced by that certain Promissory Note dated April 24, 2001, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated April 24, 2001, executed by Linda E. Kosfeld, a single person, recorded on May 25, 2001, as Document No. 7478754, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Hennepin County, Minnesota and is legally described as follows to-wit:

Lot 7, Block 1, Tretbaugh Heights North Addition, Hennepin County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 16, 2004, Debtor is delinquent in the making of monthly payments as required for the months of August, 2004 through September, 2004, inclusive, in the amount of \$1,015.55 each; accruing late charges and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be terminated so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 16th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske
James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

LOAN #: 614790439

NOTEAPRIL 24, 2001
[Date]EDEN PRAIRIE,
[City]MINNESOTA
[State]3312 W. 88TH ST, BLOOMINGTON, MN 55431
[Property Address]**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$102,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is ABN AMRO MORTGAGE GROUP, INC., A DELAWARE CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 7.250%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1ST day of each month beginning on JUNE 1, 2001.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on MAY 1, 2021, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at

4242 N. HARLEM AVE.

NORRIDGE, IL 60706

ATTN: CASHIERING

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$810.14.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

EXHIBIT *A*

7478754

5301198924 ✓

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTACERTIFIED FILED AND OR
RECORDED ON

01 MAY 25 PM 2:12

DOCUMENT #

CO. REC.

DEPUTY

When recorded mail to:
ABN AMRO MORTGAGE GROUP, INC.
P.O. BOX 5064
TROY, MICHIGAN 48064
ATTN: FINAL/TRAILING DOCUMENTS

This instrument was prepared by:
ABN AMRO MORTGAGE GROUP, INC.
2600 W. Big Beaver Rd.
Troy, MI 48064

[Space Above This Line For Recording Date]

LOAN #: 614790435

06-6090095

Universal Title Box 537

AST 5127

MORTGAGE**DEFINITIONS**

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 15, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated **APRIL 24, 2001**, together with all Riders to this document.

(B) "Borrower" is **LINDA E. ROSEFELD A SINGLE PERSON**

Borrower is the mortgagor under this Security Instrument.
(C) "Lender" is **ABN AMRO MORTGAGE GROUP, INC.**

Henn Co MRT
JRG#14706
05/18/2001
Paid \$246.00

Lender is a **CORPORATION**
DELAWARE.
MICHIGAN 48064.

organized and existing under the laws of
Lender's address is **2600 W. BIG BEAVER RD., TROY,**

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated **APRIL 24, 2001**. The Note states that Borrower owes Lender *****ONE HUNDRED TWO THOUSAND FIVE HUNDRED AND NO/100 ***** Dollars (U.S. \$102,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **MAY 1, 2031**.

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

☐ Adjustable Rate Rider
☐ Balloon Rider
☐ 1-4 Family Rider

☐ Condominium Rider
☐ Planned Unit Development Rider
☐ Biweekly Payment Rider

☐ Second Home Rider
☐ Other(s) (specify)

EXHIBITB

LOAN #: 614790439

- (H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
- (I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
- (J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
- (K) "Escrow Items" means those items that are described in Section 3.
- (L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
- (M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
- (N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note; plus (ii) any amounts under Section 3 of this Security Instrument.
- (O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.
- (P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the COUNTY [Type of Recording Jurisdiction] of [Name of Recording Jurisdiction]:

Lot 7, Block 1, Tretbaugh Heights North Addition, Hennepin County,
Minnesota.

which currently has the address of 3312 W. 86TH ST, BLOOMINGTON,

[Street] [City]

Minnesota 55431

("Property Address"):

[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic

LOAN #: 614790439

by Applicable Law. Lender or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Release. Upon payment of all sums secured by this Security Instrument, Lender shall discharge this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Waiver of Homestead. Borrower waives all right of homestead exemption in the Property.

25. Interest on Advances. The interest rate on advances made by Lender under this Security Instrument shall not exceed the maximum rate allowed by Applicable Law.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.
Witnesses:

Linda E. Kosfeld (Seal)
LINDA E. KOSFELD

State of: MINNESOTA

County of: HENNEPIN

This instrument was acknowledged before me on April 24, 2001
by LINDA E. KOSFELD A SINGLE PERSON

My commission expires: 2005

Patricia Ann Kapral
Signature of Notarial Officer

Notary Public
Title (and Rank)



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Linda Eunice Kosfeld
SSN XXX-XX-8952

CHAPTER 7 CASE

CASE NO. 04-44755 RJK

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 16, 2004, Debtor is delinquent for monthly payments for the months of monthly payments as required for the months of August, 2004 through September, 2004, in the amount of \$1,015.55 each; accruing late charges and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

The property is also subject to another mortgage in favor of Prime Security Bank in excess of \$24,450.00.

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent

with the attached proposed Order.

Dated this 16th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Suite 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 7 CASE

Linda Eunice Kosfeld
SSN XXX-XX-8952

CASE NO. 04-44755 RJK

Debtor.

AFFIDAVIT OF

~~DAN ARNSEN~~

PAMELA BECK-JANSSEN

Pamela Beck-Janssen

Dan Arnsen, being first duly sworn on oath, deposes and states:

1. That ^{she} ~~he~~ is the ^{Vice President} ~~Bankruptcy Manager~~ of Fidelity National Foreclosure Services.

2. Washington Mutual, is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated April 24, 2001, executed by Linda E. Kosfeld, a single person, recorded May 25, 2001, as Document No. 7478754. The property is located in Hennepin County, Minnesota and is legally described as follows. to-wit:

Lot 7, Block 1, Tretbaugh Heights North Addition, Hennepin County, Minnesota.

3. That ^{she} ~~he~~ has reviewed the account records relating to the Kosfeld mortgage loan, account no. 5301198924.

4. That as of September 7, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$94,273.96
Interest through September 7, 2004	1,273.37
Attorney's Fees:	700.00
Late Charges:	40.51
Other Fees:	54.50

TOTAL:	\$96,342.34
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5. That the mortgage loan is delinquent for monthly mortgage payments for the months of August, 2004 through September, 2004 in the amount of \$1,015.55 each.

6. This affidavit is given in support of the motion of Washington Mutual for relief from the automatic stay.

FIDELITY NATIONAL FORECLOSURE SERVICES

By

~~Dan Arnsen~~

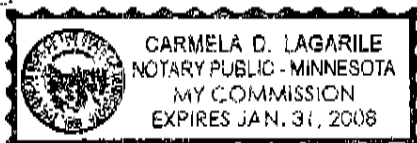
Its Bankruptcy Manager

Pamela Beck-Janssen
Pamela Beck-Janssen
Vice President

Subscribed and sworn to before me
this 9 day of Sept., 2004.

Carmela D. Lagarile
Notary Public

9733.1



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Linda Eunice Kosfeld
SSN XXX-XX-8952

CHAPTER 7 CASE

CASE NO. 04-44755 RJK

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Diana Waletzko, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Suite 300, Woodbury, Minnesota, declares that on September 16, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Pamela Beck-Janssen, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Linda Eunice Kosfeld
3312 W 88th St
Bloomington, MN 55431

Randall L. Seaver
12400 Portland Ave S. Ste 132
Burnsville, MN 55337

Pro Se
Linda Eunice Kosfeld
3312 W 88th St
Bloomington, MN 55431

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 16th day of September, 2004.

/e/ Diana Waletzko
Diana Waletzko

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Linda Eunice Kosfeld
SSN XXX-XX-8952

CHAPTER 7 CASE

CASE NO. 04-44755 RJK

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of Washington Mutual (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 14, 2004, at U.S. Courthouse, 300 South 4th Street, Minneapolis, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated April 24, 2001, executed by Linda E. Kosfeld, a single person, recorded on May 25, 2001, as Document No. 7478754 covering real estate located in Hennepin County, Minnesota, legally described as follows, to-wit:

Lot 7, Block 1, Tretbaugh Heights North Addition, Hennepin County, Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3),

this Order is effective immediately.

Dated: _____

Judge of Bankruptcy Court